

Appl. No. 10/085,298
Amendment dated April 18, 2006
Response to Office Action of March 28, 2006

REMARKS

Applicants acknowledge receipt of the Office action dated March 28, 2006. In that action the Examiner: 1) rejected claims 8, 10 and 62 as allegedly obvious over Mustafa (U.S. Pat. Appl. Pub. 2003/0028786) in view of Allen (U.S. Pat. Appl. Pub. 2001/0034567); 2) rejected claims 9, 11-12 and 15 as allegedly obvious over Mustafa in view of Allen and in further view of Hsu (U.S. Pat. No. 5,812,562); 3) rejected claim 13 as allegedly obvious over Mustafa in view of Allen and in view Hsu and in further view of Microchip Technology Inc.; 4) took official notice with respect to the limitations of claim 14; and 5) made the action final.

Reconsideration is respectfully requested.

I. THE OFFICE ACTION OF MARCH 28, 2006 IS NOT PROPERLY FINAL

The Manual of Patent of Examining Procedure (MPEP) provides guidance as to when a second Office Action is properly final

Under present practice, second or any subsequent actions on the merits shall be final, **except** where the examiner introduces a new ground of rejection **that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an Information Disclosure Statement**

(MPEP Eighth Ed. Rev. 3, August 2005, §706.07(a)), p700-80 (emphasis added)).

In the Office Action of November 2, 2005, claim 8 was rejected as allegedly anticipated by Mustafa. In the Response filed by the Applicants on January 18, 2006, Applicants amended claim 8 to remove the terminology "by way of an interface bus" and pointed out that Mustafa falls woefully short of an anticipating the limitations of claim 8. In the Office Action of March 28, 2006, the Examiner presents a new rejection of claim 8 over Mustafa and Allen, and now relies on Allen for the very teachings which Applicants pointed out are not disclosed in Mustafa. Thus, the Office Action of March 28, 2006 has a new ground of rejection to overcome the shortcomings of the previous rejections regarding the interface bus; therefore, the new ground for rejection was not necessitated by the amendments to claim 8. Moreover, the Allen reference was not submitted in an Information Disclosure Statement.

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Based on the foregoing, Applicants respectfully submit that the Office Action of March 28, 2006 is not properly final, and that the finality of that Action should be removed.

II. ART-BASED REJECTIONS

Notwithstanding that the Office Action of March 28, 2006 is not properly final, the Office Action fails to make a *prima facie* case of obviousness with respect to the pending claims.

Claim 8, for example, specifically recites, "a first non-volatile storage device coupled to the microcontroller, the first non-volatile storage device storing a plurality of programs executable by the microcontroller, the plurality of programs comprising at least a program to perform flow calculations, a program to perform PLC functions, and a program to perform RTU functions" The Office Action admits as a matter of law, now, that Mustafa does not expressly disclose these elements and relies on the Abstract of Allen. Allen's Abstract is reproduced in its entirety below for convenience of the discussion.

A network management system remotely manages a fuel dispensing network comprising a plurality of refueling stations each including several fuel dispensing assemblies. The network management functions include reconfiguring the fuel dispensing equipment, downloading software updates, monitoring the status and performance of the fuel dispensing equipment, performing diagnostic and troubleshooting procedures, and scheduling maintenance calls and other servicing activity in response to the diagnostic evaluations. The management application performs its various network management functions in conjunction with a plurality of dedicated software agents each resident at a respective refueling station.

(Allen Abstract).

Noticeably absent from the only location cited in Allen by the Office Action is any mention of claim limitations of a non-volatile storage device holding a plurality of programs comprising at least a program to perform flow calculations, a program to program to perform PLC functions and a program to perform RTU functions.

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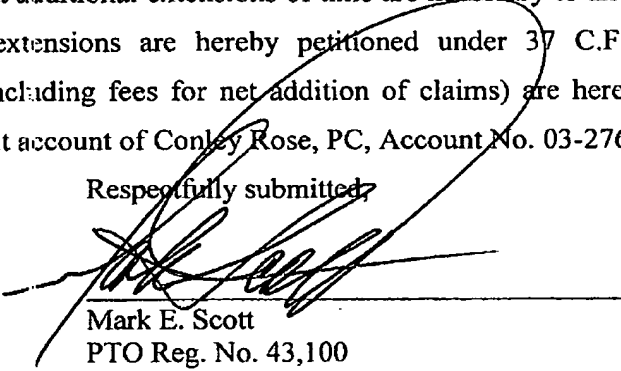
Thus, the Office Actions fails to make a *prima facie* case of obviousness with respect to the pending claims. Since all the pending claims depend directly or indirectly from claim 8 Applicants respectfully submit that all the pending claims should be allowable.

III. CONCLUSION

In the course of the foregoing discussions, Applicants may have at times referred to claim limitations in shorthand fashion, or may have focused on a particular claim element. This discussion should not be interpreted to mean that the other limitations can be ignored or dismissed. The claims must be viewed as a whole, and each limitation of the claims must be considered when determining the patentability of the claims. Moreover, it should be understood that there may be other distinctions between the claims and the cited art which have yet to be raised, but which may be raised in the future.

Applicants respectfully request reconsideration and that a timely Notice of Allowance be issued in this case. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to the deposit account of Conley Rose, PC, Account No. 03-2769.

Respectfully submitted,



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